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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN RE GENERAL ATOMIC COMPANY,
Petitioner.

On Petition for a Writ of Mandamus to the District Court for the First Judicial District, Santa Fe County, New Mexico

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PETITIONER'S REPLY BRIEF

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The sole issue presented by GAC's Petition for a Writ of Mandamus is whether the most recent interference by the Santa Fe court with the federal arbitration conducted in San Diego was a violation of this Court's mandates in *General Atomic Co.* v. *Felter*, 434 U.S. 12 (1977) (*"Felter I"*) and *General Atomic Co.* v. *Felter*, 436 U.S. 493 (1978) (*"Felter II"*). If the decision and order of January 9, 1981, declaring that "[t]he arbitrators had no jurisdiction to issue an award" and vacating the arbitration award on that basis as "illegal, void and of no effect" (Pet. App. 13a) was functionally equivalent to the Santa Fe court's "stay" order of December 16, 1977, which resulted in *Felter II*, GAC is entitled to a writ of mandamus. The fact that GAC is also pursuing an appeal to the New Mexico Supreme Court in which this issue, among

others, is raised does not affect the validity of our request for mandamus. This Court noted in *Felter II* that it would be wrong to require GAC to exhaust "a lengthy process of litigation, involving several layers of courts" in order "to obtain execution of the judgment of this Court." 436 U.S. at 497. The same conclusion applies to the Santa Fe court's 1981 order as applied to its 1977 order.

This Court declared in *Felter II* that the Santa Fe court's December 1977 "stay" of arbitration had done "precisely" what *Felter I* said the Santa Fe court could not do: "interfere with attempts by GAC to assert in federal forums what it views as its entitlement to arbitration." 436 U.S. at 496 (footnote omitted). *Felter I* had not declared that only an injunction against arbitration was prohibited by the Supremacy Clause. It had prohibited "interference" by the Santa Fe court "for any reason . . . whatsoever" with the assertion of federal arbitration rights. The term "interfere" was used again when this Court said that "the Santa Fe court is without power under the United States Constitution to interfere with efforts by GAC to obtain arbitration in federal forums . . ." (436 U.S. at 497). A "stay" of arbitration was "precisely" what had been prohibited in *Felter I* because it constituted "interference."

To be sure, this Court noted in *Felter II* what its "prior opinion" and "prior decision" had *not* prevented. The Court said that *Felter I*—the "prior opinion" and "prior decision"—did not preclude the "making" of findings by the Santa Fe court on the issue of waiver or on the existence of an agreement to arbitrate. Nor did *Felter I* prevent the Santa Fe court from proceeding with its own trial "pending arbitration in other forums." 436 U.S. at 497. These observations as to the precise holding of *Felter I* were not approvals or affirmances of actions of the Santa Fe court; they merely described precisely the mandate of this Court which GAC was endeavoring to enforce with the Petition which resulted in *Felter II*. This Court's jurisdiction on a writ of mandamus was limited to enforcement of its prior mandate, which prohibited "interfer-

ence" in any form and for any reason. It was, therefore, appropriate for the Court to define with particularity what the earlier mandate had said and to grant the requested writ only to the extent that its prior mandate required.

The order of December 27, 1977, was deemed not to constitute "interference" with the federal arbitration, and it could not, therefore, be reached with a writ of mandamus. This Court explicitly noted that fact in footnote 2 of *Felter II*, wherein it said that there was "no occasion to disturb" the order of December 27—which had only allowed the Santa Fe trial to continue—because this Court did not read that order "as restricting GAC from pursuing its arbitration claims in other forums." 436 U.S. at 498, n. 2. Whether or not the Santa Fe trial proceeded on its schedule did not affect GAC's ability to arbitrate the contract issues which it had finally been permitted to bring to arbitration.

If, however, the December 27 order had gone beyond a mere refusal to stay the Santa Fe trial—if, for example, it had incorporated a declaratory judgment stating that the arbitrators had "no jurisdiction to issue an award" and no "powers" other than "to dismiss the proceedings" and that any federal arbitration held thereafter was for that reason "illegal, void and of no effect"—this Court would, we submit, have concluded that the order did "restrict" GAC from pursuing its arbitration claims and did "interfere" with that right. In that event the State-court order nullifying the arbitration in advance would have been the functional equivalent of a "stay" of arbitration and would properly have been the subject of a writ of mandamus. For, as this Court noted in *Samuels* v. *Mackell*, 401 U.S. 66, 72-73 (1971), a declaratory judgment invalidating a proceeding in another forum "has virtually the same practical impact as a formal injunction would."[1]

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[1] *Samuels* v. *Mackell*, 401 U.S. 66 (1971), concerned the validity of a federal declaratory judgment relating to the constitutionality of a State-court prosecution. Using the term "interference" (which is critical here) this Court said that "ordinarily a declaratory judgment will result in pre-

What the Santa Fe court did on January 9, 1981, was tantamount, in every respect, to a declaratory judgment issued prior to the arbitration declaring it to be null and void. The January 1981 order "vacates" the arbitration award (a patent "interference" with a federal arbitration held in another jurisdiction) entirely on the ground that the arbitrators never had "jurisdiction" or "powers" to proceed. This is not the judicial "review" contemplated by Section 10 of the Federal Arbitration Act; it is a New Mexico court's forcible capture of a California-based arbitration guaranteed by federal law and the entry of an order designed to nullify *ab initio* the work of the arbitration panel without regard to anything that occurred during the course of that proceeding.

Indeed, even UNC recognized that the "significance" of this Court's prior decisions in *Felter I* and *Felter II* was that "claims of *res judicata* (or full faith and credit, for that matter) must be pressed before the tribunal where the suit pends (which UNC is doing with this [Arbitration] Panel). . . ."[2]

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cisely the same interference with and disruption of state proceedings that the long-standing policy limiting injunctions was designed to avoid." 401 U.S. at 72. This Court went on to say (401 U.S. at 73):

> Ordinarily . . . the practical effect of the two forms of relief will be virtually identical, and the basic policy against federal interference with pending state criminal prosecutions will be frustrated as much by a declaratory judgment as it would be by an injunction.

[2] In its Memorandum of Position filed with the Arbitration Panel on January 15, 1979, UNC said:

> The significance of the U.S. Supreme Court opinions concerning the disputes between UNC and GAC is apparent in light of the case of *Donovan* v. *City of Dallas*, 377 U.S. 408 (1964) which holds that claims of *res judicata* (or full faith and credit, for that matter), must be pressed before the tribunal where the suit pends (which UNC is doing with this Panel) and may not be enjoined by another court.

And UNC told the Panel on March 27, 1979, during oral argument at an arbitration hearing in San Diego:

> Mr. Olmsted: Obviously. I think you have the jurisdiction and the

It thus conceded that a judgment that the arbitrators had no "jurisdiction" could not be squared with this Court's prior mandates.

The Santa Fe court's lack of authority to interfere with the federal arbitration is not cured or corrected by any of the facts alleged in UNC's Brief in Opposition. These facts are fundamentally irrelevant to the issue presented by this Petition—which is whether the Santa Fe court's latest order violates this Court's mandates. In addition, many of UNC's recitations are misleading or false. In particular, UNC makes a determined effort to have this Court believe that GAC elected to litigate in the Santa Fe court rather than to arbitrate its dispute with UNC, supporting this suggestion by implying that the Santa Fe case was begun by UNC in mid-1975 and that GAC deliberately refrained from demanding arbitration until November 29, 1977 (UNC Br. in Opp., pp. 2-4). The majority of the arbitrators rejected this factual assertion in their Partial Award (Petition for a Writ of Certiorari, No. 80-2106, pp. 48-54a). Several key facts which UNC has omitted, some of which were cited by the arbitrators, are the following:

(1) That the unconstitutional injunction against arbitration was first removed on November 28, 1977, and on the next day GAC's demand for arbitration was filed;

(2) That in the pleadings leading to this Court's decision in *Felter II*, GAC emphasized its right to arbitrate and the fact that the unconstitutional injunction interfered with that right;

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power to decide whether [the pre-arbitration rulings of the Santa Fe Court] are res judicata.

* * *

Judge Bratton [of the United States District Court for the District of New Mexico] said the panel should decide the full faith and credit claims of United Nuclear . . . . You do have the power, you have the jurisdiction . . . .

(3) That the Santa Fe judge's authorization of arbitration with UNC "in this forum [*i.e.*, Santa Fe]"—on which UNC relies—would have subjected GAC to supervision and review of the arbitration by the very judge to whose jurisdiction GAC objected and would have deprived GAC of its federal right to demand arbitration in other locales;

(4) That the unconstitutional injunction of April 2, 1976, was issued before GAC was required to serve its answer—*i.e.*, before the earliest juncture when an election between arbitration and litigation is required under federal law;

(5) That in virtually all pleadings filed before April 2, 1976, GAC expressly reserved its right to arbitrate; and

(6) That the Santa Fe action was begun not in mid-1975—when a predecessor lawsuit removable to federal court was instituted by UNC—but on the very last day of 1975, after UNC voluntarily dismissed its earlier action to avoid federal jurisdiction.

As the arbitrators found, GAC never voluntarily chose to litigate in Santa Fe (see Petition for a Writ of Certiorari, No. 80-2106, pp. 48a-54a). It made various efforts to bring the dispute into a more neutral forum such as a federal court. When those efforts failed on technical grounds, GAC indicated its preference for arbitration. An unconstitutional order of the Santa Fe court then aborted the arbitration, and all the subsequent restrictions upon the arbitration are a direct consequence of that order. This Court's mandate that the New Mexico courts may not interfere with the federal right was squarely violated by the "stay" of December 16, 1977, and it is equally violated by the order declaring that the arbitrators never had "jurisdiction to issue an award," and "vacating" the arbitration award dated January 9, 1981.

Finally, it is apparent that the validity of the January 9, 1981, order was not an issue in any prior petition for review filed in this Court. UNC's claim that this Petition presents an argument "rejected in *Felter II*" is plainly erroneous (see pp. 2-3, *supra*), as is its related assertion that the same issue

was raised in GAC's previous petitions. See our Reply Brief in No. 80-2106, at pp. 9-10. In no prior case was this Court presented with the question whether the same State tribunal which was forbidden to enjoin or stay a federal arbitration could enter an order "vacating" the arbitration award on the ground that its own decisions had deprived the arbitrators of all "jurisdiction" and "powers."

CONCLUSION

For the foregoing reasons, as well as those stated in our Petition, this Petition for a Writ of Mandamus should be consolidated and set for briefing and oral argument with No. 80-2106.[3]

Respectfully submitted,

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[3] The issue presented on this Petition does not affect Indiana & Michigan Electric Company because it involves only the validity of an arbitration award to which Indiana & Michigan was not a party.